



# Informal governance of international climate policy

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## 1. Introduction

Scholarly attention to informal governance in international politics has substantively increased in recent years (Westerwinter and Abbott 2016: 2). Research in this field is spurred by the observation of a rise in the number of informal intergovernmental organizations (IIGOs) and transnational governance initiatives (TGIs), both of which take over part of the roles traditionally handled by formal intergovernmental organizations (FIGOs). While IIGOs are composed of national governments and thus resemble FIGOs except for their informal organizational structure, TGIs include a variety of different members ranging from private firms, over non-governmental organizations (NGOs), to governments at various levels.<sup>2</sup> Moreover, within FIGOs, formal governance structures have been increasingly challenged by new emerging powers, and researchers have become interested in assessing to what extent formal processes are simply circumvented by informal processes to (re)establish the balance of control corresponding to actual power relations between countries (e.g., Stone 2011). Overall, a host of recent studies documents the substantial rise of informality in world politics both within and outside of existing formal organizations.

However, the development of informality differs between different issue areas, and only limited information is available so far on the explanation of different roles that informality takes in these fields. This paper contributes to this knowledge as one out of three comparable case studies assessing similar questions within the sphere of different regime complexes.

The specific issue area considered here is international climate policy. The United Nations Framework Convention on Climate Change (UNFCCC) provides the formal organizational structure specifically created for the purpose of dealing with the challenge of global climate change. The UNFCCC being a United Nations organization, all members have equal formal rights so that issues of struggle regarding the readjustment of the formal power balance within the organization do not arise. In recent years, notably before the Paris Agreement of December 2015, the UNFCCC has widely been regarded as unable to fulfill its role to provide a universally accepted international regime for mitigation of global climate change, giving rise to a search for alternative or complementary solutions. Climate change is also an area that has spurred considerable public interest and media attention, which may quite naturally lead to a strong involvement of private actors and their engagement within TGIs. For most countries, international climate policy is an area of low politics, strongly related to questions of social justice and redistribution. Nevertheless, due to the threats of climate change for survival of small island states and conflicts e.g. generated through migration pressure within and between countries, links to high politics such as security policy also exist. From this perspective, the case of international climate policy may be

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<sup>2</sup> For a detailed definition of the different types of organizations, see Westerwinter and Abbott (2016: 1).

considered as situated somewhere in between the other two cases considered in this volume, namely the case of development finance (Reinsberg 2016) and the case of security policy (Westerwinter 2016).

In the following, we will describe and explain the development of informality within the climate change regime complex, and discuss its effect on the overarching goal of mitigating global climate change. We will first consider informality with respect to the actors within the regime complex (Section 2), and second, informality of rules and processes within the formal structure of the UNFCCC (Section 3). The analysis is based on a review of the existing literature, participant observation at the UNFCCC's Conferences of the parties (COP) since 1995, and specific stakeholder interviews at COP 21 in Paris in 2015<sup>3</sup>. Regarding the relevant actors, it also draws upon the database provided by Westerwinter et al. (2015) on the basis of prior work by Pevehouse et al. (2015), Vabulas and Snidal (2013), Abbott and Hale (2014), Roger et al. (2016), and Michaelowa and Michaelowa (2016b), partially updated for the specific context of this case study through our stakeholder interviews and information on observer organizations available on the UNFCCC website (see <http://maindb.unfccc.int/public/igo.pl?mode=wim>).

Overall, our study suggests that while there has been a significant rise of informal organizations involved in international climate politics, they generally do not play an independent role with respect to the core objective of the climate change regime to mitigate climate change, but rather support the UNFCCC in its attempt to respond to this challenge. Within the UNFCCC, a variety of informal rules and procedures have developed over time, but some of them were also been challenged for lack of transparency and equity, were abandoned at some point, and have now been replaced by more formal or alternative informal procedures. While some informal procedures were clearly instrumental to successful agreements, others are widely blamed for having contributed to their failure. Hence the appropriate choice of informal procedures appears to be crucial for the success or the lack thereof within the UNFCCC. This provides a strong role and responsibility for the host country government of each COP since it is charged with the presidency and hence responsible for a smooth organization of the negotiation process at the COP.

## **2. The rise of informal organizations and initiatives**

Our discussion of the relevant actors builds on prior work notably by Keohane and Victor (2011), who introduce the concept of the regime complex into climate policy, and provide a differentiated assessment of the roles and objectives of different organizations created and active within this context. Michonski et al. (2010) also provide a detailed discussion of selected formal and informal multilateral organizations involved in the field. Green (2013) takes these ideas forward with a specific focus on the role of private actors. This perspective also plays an important role in the subsequent literature focusing on TGIs. Bulkeley et al. (2014) as well as Andonova and Hale (2016) provide a comprehensive overview of the differentiated structure of these initiatives, and combine the contributions of a large number of scholars to explain the emergence, and to assess the role of TGIs for climate change governance.

We start our discussion with an updated overview of the development of the different organizations and initiatives over time. This will be followed by an attempt to explain this development and to summarize

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<sup>3</sup> For a list of interviews, see Annex 1.

its effects based on existing studies and our additional information from interviews and participant observation at the COPs.

### *2.1. Development over time*

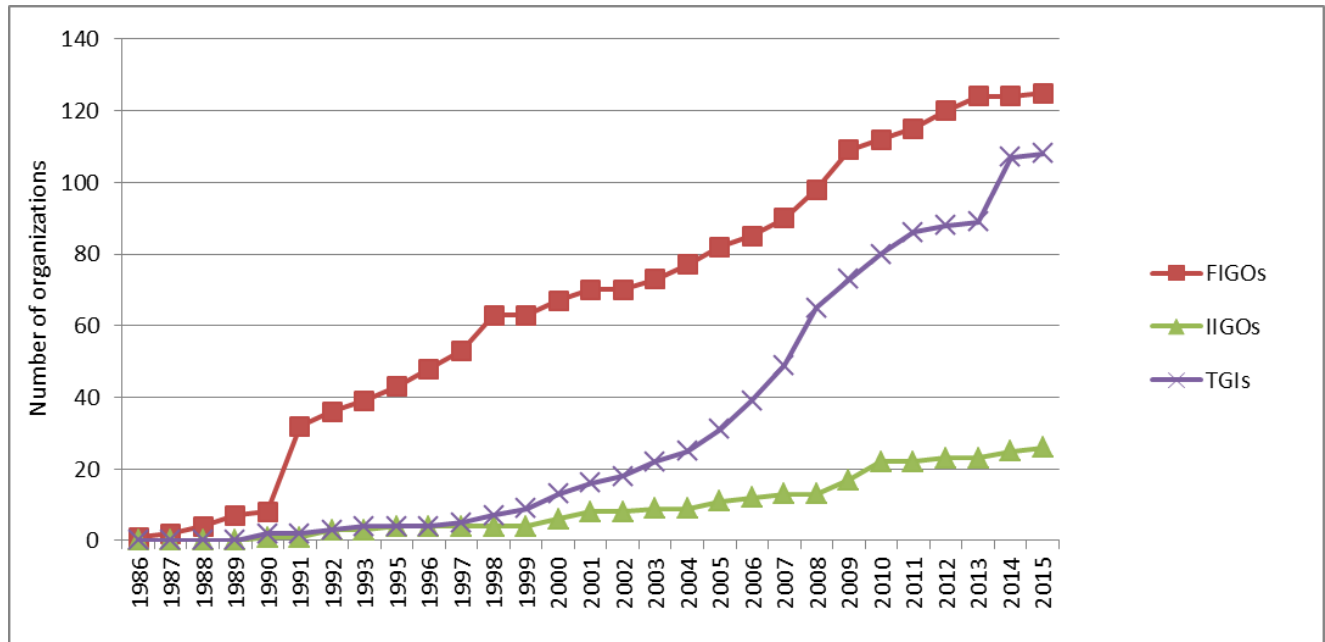
International climate policy emerged in the late 1980s and was institutionalized in the early 1990s. Initially, the international process on climate change was driven by single governments organizing conferences on this issue, such as the Toronto conference in 1988 in Canada, and the Nordwijk conference 1989 in the Netherlands. The first FIGO built around climate change issues was the Intergovernmental Panel on Climate Change (IPCC) set up in 1988. Its reports, especially the First Assessment Report of 1990, became crucial in development of international climate change governance (Johnson 2014). In a relatively short negotiation process spanning 1991 and 1992, the UNFCCC was agreed upon. Since the UNFCCC's entry into force in 1994 its Secretariat organized a formal negotiation process meeting at least twice a year.

Formal intergovernmental organizations like multilateral development banks have actively participated in UNFCCC negotiations from the beginning. The World Bank especially played a very proactive role in developing pilot approaches for the market mechanisms under the Kyoto Protocol as well as climate finance after the Copenhagen Accord. The OECD regularly published analyses aiming to “educate” negotiators regarding the rational design of key instruments of the regime. The same applies for the International Energy Agency (IEA). Both institutions publish data on CO<sub>2</sub> emissions from fossil fuel consumption annually, thus providing a means to compare country performance with regards to climate change mitigation.

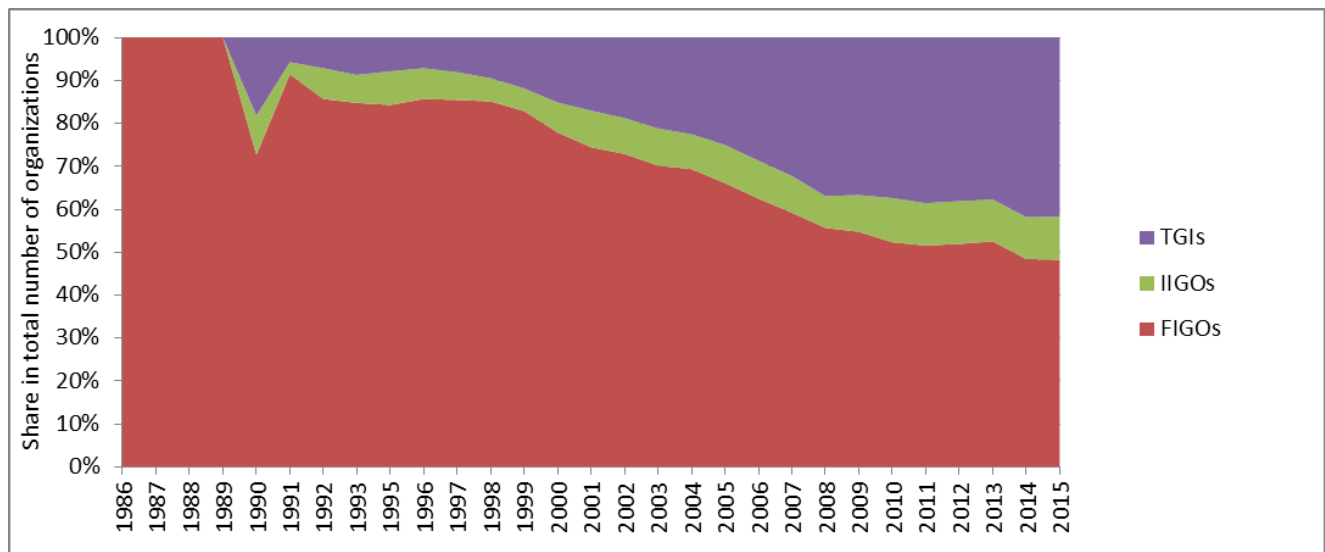
With the climate negotiations gaining in importance, further FIGOs became associated with the process, mostly as implementers or facilitators of climate-related projects in their specific area of activity. Within the UN system it became impossible for FIGOs in related areas to ignore the UNFCCC process (interviews with representatives of UN organizations present at COP 21). In contrast to the large scale involvement of existing organizations, only few FIGOs were newly created with a specific focus on international climate policy. Notable exceptions are the Global Environment Facility (GEF) and the Green Climate Fund (GCF) that were established as financial mechanisms of the UNFCCC in 1991 and 2010 respectively.

The significant rise of formal intergovernmental organizations involved in the climate change regime complex was paralleled by a similar rise of informal intergovernmental organizations and transnational governance initiatives (see Figure 1). In terms of sheer numbers, notably the recent rise of the number of TGLs is impressive. With an overall number of more than a hundred in 2015, they come close to outnumbering the formal intergovernmental organizations active in the field. In contrast, the number of IIGOs has been growing more slowly, but also more steadily. This is in line with the overall development across issue areas (see Westerwinter and Abbott 2016: Figure 3). Figure 2 illustrates that TGLs and IIGOs together now represent more than half of the organizations within the climate change regime complex. Of course, this kind of presentation does not take into account the size and the relevance of the different organizations, which will be further discussed below.

**Figure 1: The involvement of FIGOs, IIGOs and TGIs in a comparative perspective**



**Figure 2: The relative shares of FIGOs, IIGOs and TGIs**



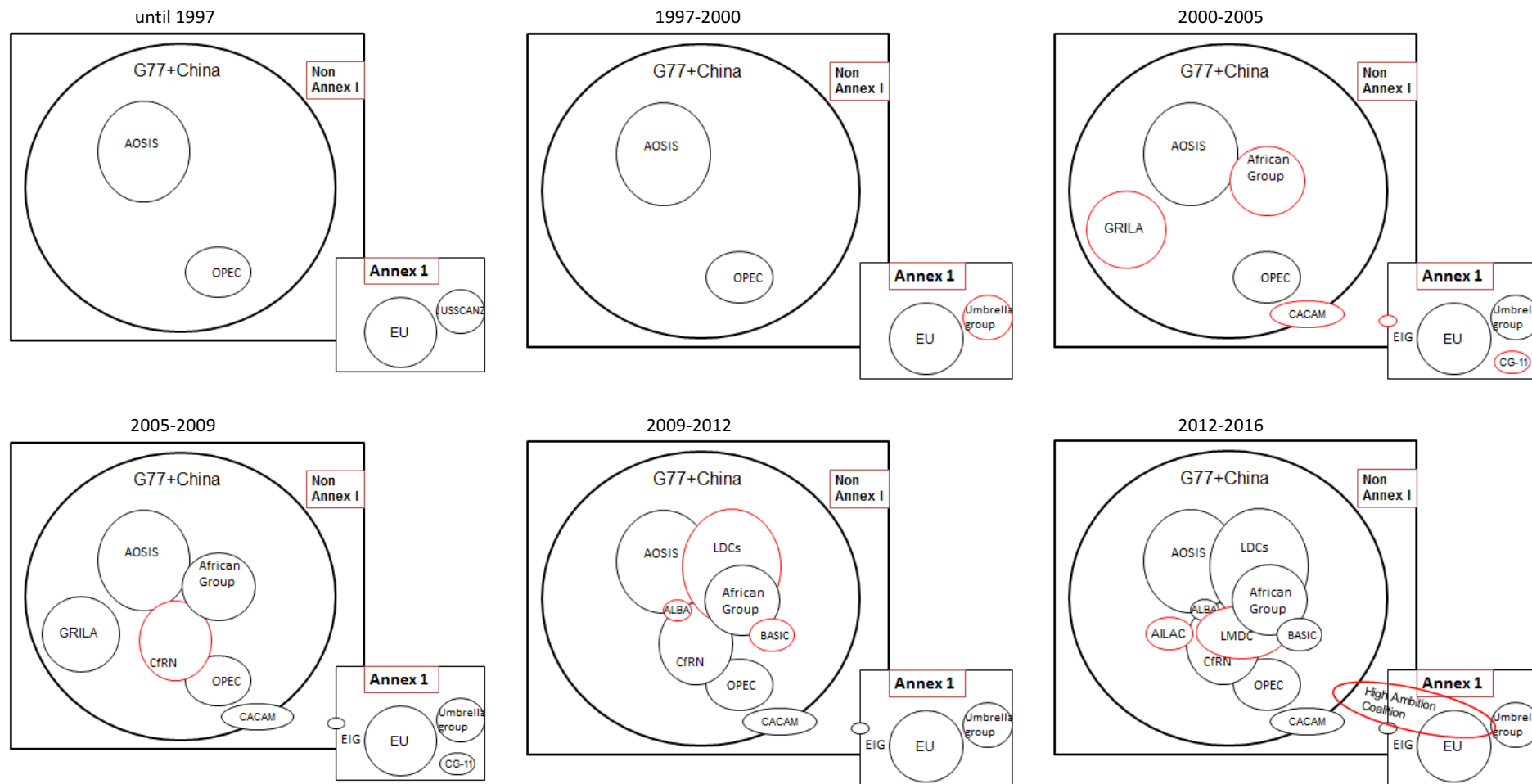
As opposed to FIGOs most of which simply started to orient some of their activities towards climate-relevant topics, the overwhelming majority of non-formal organizations and initiatives in our database are new organizations, created specifically for the purpose of activities related to international climate policy. How did the growth process of IIGOs and TGIs develop over time and what kind of organizations are involved?

Just as FIGOs, IIGOs have been an important feature of international climate negotiations right from the beginning. The vast majority of these informal organizations are the country negotiation groups active within the framework of the UNFCCC. The frontrunner was the Alliance of Small Island States (AOSIS) that already emerged in 1990 before the Intergovernmental Negotiating Committee (INC) started its deliberations. In the period leading up to the agreement on the Kyoto Protocol to the UNFCCC in 1997, the landscape of negotiation groups was comparatively simple. Market-oriented industrialized countries that were somewhat reluctant to address climate change formed a group called “JUSSCANZ” (the acronym being derived from the initials of the original members Japan, US, Switzerland, Canada and New Zealand) while developing countries negotiated through the G77+China, with vocal subsidiary groups being AOSIS and the Organisation of the Petroleum Exporting Countries (OPEC) (Lesolle 2014). After Russia joined JUSSCANZ in 1997, the group was relabeled as “Umbrella Group”. Among these groups, only JUSSCANZ and AOSIS had an informal character, since both OPEC and G77+China had been established with a formal governance structure and administrative offices long before.

The rise of informal negotiation groups started in the year 2000, which saw the formation of the Environmental Integrity Group (EIG), consisting of Switzerland, Liechtenstein, Monaco, Mexico and South Korea. Until today, it remains the only group including both industrialized and developing countries (Darby 2015). In the following years, mainly triggered by the failure of the conference in The Hague in late 2000, regional groups started to emerge, such as the African Group, the Grupo de Iniciativa Latinoamericana (GRILA), Countries of Central Asia and the Caucasus, Albania and Moldova (CACAM) and Central Group 11 (CG 11) for Eastern European countries (see Royden 2001 and UNFCCC 2016b). However, some of these regional groups were rather instable and only a few have survived to date, as regional allegiances have been substituted by content-related ones (see e.g. Costantini et al. 2016: 136). The first of those was the Coalition for Rainforest Nations (CfRN) formed in 2005 which is fighting for incentives to prevent emissions from forest destruction (CfRN 2016). This group has even set up a Secretariat, thus becoming an FIGO.

The Copenhagen Conference of 2009 and its aftermath led to an open split of G77+China in various groups that often overlap. In the run-up to the conference the large emerging economies Brazil, South Africa, India and China formed the BASIC group. After the failure of Copenhagen, the socialist countries from Latin America and the Caribbean set up the Bolivarian Alliance for the Peoples of Our America (ALBA). The year 2012 saw the birth of the progressive group “Independent Alliance of Latin America and the Caribbean” (AILAC) which then triggered the “Like-Minded Developing Countries on Climate Change” (LMDC) bringing together developing countries from all continents reluctant to engage in strong mitigation policy. Since Copenhagen, the Least Developed Countries have formed a negotiation group, too. The Paris Conference saw the emergence of a “High Ambition Coalition” including over 100 countries and unlikely to last due to the vast variation of preferences among its members. Overall, the landscape of country negotiation groups has moved from few, mutually exclusive groups with a large membership to a plethora of groups with overlapping membership (see Figure 3). For further details on the individual groups, see Blaxekjaer and Nielsen (2015) and Government of France (2015).

**Figure 3: The development of negotiation groups over time**



Notes: The acronyms refer to: G77+China - Group of 77 + China; AOSIS - Alliance of Small Island States; OPEC - Organisation of the Petroleum Exporting Countries; EU - European Union; GRILA - Grupo de Iniciativa Latinoamericana; CACAM - Countries of Central Asia and the Caucasus, Albania and Moldova; EIG - Environmental Integrity Group; CG-11 - Central Group 11; CFRN - Coalition for Rainforest Nations; CVF - Climate Vulnerable Forum; LMDC - Like Minded Developing Countries; BASIC - Brazil, South Africa, India and China; LDCs - Least Developed Countries. New groups are highlighted by red circles. For the list of members in each of these groups, see: <https://www.carbonbrief.org/interactive-the-negotiating-alliances-at-the-paris-climate-conference>.

Annex 1 refers to the corresponding annex of the Convention, which lists all countries that were members of the OECD in 1992; the Russian Federation and the countries with economies in transitions including those from Central to Eastern Europe. Non Annex 1 refers to all other UNFCCC member countries.

Apart from country negotiation groups only a handful of other informal intergovernmental organizations are part of the climate change regime complex. These include the Group of Eight (G8), G8+5 (i.e., G8 in combination with Brazil, China, India, Mexico and South Africa), the Group of Twenty (G20), and the Major Economies Forum (Michonski et al. 2010: 8ff., Keohane and Victor 2011: 10f). The G8 started to debate climate related topics in 2005, but these discussions were broadened to include other major emitters at the level of the G8+5 and the G20 or the Major Economies Forum in later years. The Major Economies Forum is almost identical to G20 in its membership, but confined to the discussion of climate policy (Michonski et al. 2010: 10).

As opposed to IIGOs, TGIs have emerged primarily after the Kyoto Protocol was agreed in 1997. We further observe an irregular growth trend. There appears to be a steepening of the increase with the Kyoto Protocol's entry into force in 2005, and a flattening after the Copenhagen conference in 2009 followed by a further upward jump shortly before the conference in Paris in 2015. These shifts concern different types of TGIs: The TGIs created just after the Kyoto Protocol like the Prototype Carbon Fund and various similar carbon funds managed by the World Bank focus on the market mechanisms defined under the Kyoto Protocol, the Clean Development Mechanism (CDM) and Joint Implementation (JI). These TGIs include a variety of government and non-government actors. Their members provide the funding for concrete climate change mitigation projects generating emission credits under the CDM and JI proposed by the manager of the fund.

When the Kyoto Protocol entered into force, and signaled that in industrialized member countries significant emission reductions would truly become necessary and thus emission credits would have a significant value, a number of networks and standards for participation in the Kyoto Mechanisms were initiated, frequently by private actors and sub-national level governments. The Copenhagen failure in late 2009 to reach consensus on a successor agreement to the Kyoto Protocol triggered a collapse in the demand for emission credits for the time after 2012 and thus significantly reduced the development of this type of TGIs. The final major increase of TGIs in the run-up to the Paris Conference in 2015 is mostly due to new networks with little emphasis on concrete climate change mitigation measures, primarily signaling the participating actors' willingness to avoid a total standstill of the international negotiation process (Michaelowa and Michaelowa 2016b). Overall, among the 109 climate-related TGIs in our dataset the majority of 68% focuses on networking, 20% are standards, 8% are carbon funds, 4% relate to technology development, and 5% have no mitigation related purpose, but purely focus on adaptation (Michaelowa and Michaelowa 2016b).

While the increase in TGI numbers is impressive, the above categorization may already suggest that their relevance for actual international climate policy varies considerably. When examining organizational design features ensuring that TGI members effectively take action for emissions reductions, we see that, in fact, the bulk of initiatives cannot be expected to induce significant climate change mitigation: Only 11% of the initiatives formulate any mitigation target, and only 13% provide some kind of financial incentives for mitigation activities of their members. 46% of the initiatives foresee some kind of monitoring, reporting and verification (MRV), but only 27% define a baseline against which to measure potential change. Almost half of the initiatives do not show any of these provisions (see Annex 2, Table A1, last row, and Michaelowa and Michaelowa 2016b, Appendix Table A1).

Actors participating in TGIs are mainly from industrialized countries. According to our data not even a quarter of the initiatives have a majority of members from developing countries. Furthermore, while only a single initiative (the "Asian Cities Climate Change Resilience Network" focusing on adaptation) is composed



of developing country actors alone, almost 40% have members only from industrialized countries. In addition, only in three out of 109 cases, the founding country (i.e. the home country of the founding actor or the country in which the foundation took place) is not an OECD country. These are the “Clean Air Initiative” founded in the Philippines in 2001, “Socialcarbon” founded in Brazil in 2008, and the “Panda Standard” founded in China in 2009. All of them focus on MRV, the Chinese one additionally requires a baseline, but none of them have mitigation targets or incentives provided by the initiative. No significant mitigation-related initiative has been created by or dominated by vulnerable low-income countries. TGLs do not seem to provide an appropriate vehicle for them to promote their interests and to overcome their limited power in the formal negotiation process. These results confirm the prior analysis of transnational climate governance initiatives in Bulkeley et al. (2012). They are further reinforced by the finding that there is no positive correlation (in fact, no significant correlation at all) between the share of developing country actors and the presence of the different mitigation-related features of organizational design in these initiatives (see Annex 2, Table A1).

## *2.2. Explaining the rise of informal organizations and initiatives*

Taking together the timing of the emergence of IIGOs and TGLs and their purpose discussed above suggests that the dynamics of the UNFCCC process itself has been driving the development of these organizations over time. This is most obvious for the vast majority of IIGOs established as negotiation groups when countries noticed that given the development of the negotiations, coalitions with new partners would further their interests. While external to the negotiations, TGLs have also been responsive to the UNFCCC process. The different typologies discussed above reflect their different purposes, namely sharing information (networks), developing and implementing cost-effective means to deal with upcoming or newly introduced requirements (carbon funds, technology development initiatives), lobbying in order to influence the negotiation outcomes (networks), improving the members’ public image and enhancing their competitiveness through transparency about their mitigation action (networks, standards). They all relate in some way or the other to the UNFCCC process and their prevalence among newly created initiatives directly corresponds to the signals provided there. Thus TGLs with a clear focus on concrete mitigation action emerged primarily in the context of the Kyoto Protocol (see also the econometric analysis by Michaelowa and Michaelowa 2016b: Table 3), initially mainly driven by the interest of the private sector to influence the design of critical policy instruments, and later, to find efficient means to deal with the Kyoto emission targets that would not hamper international competitiveness. Such proactive interest from the private sector waned after the failure of the Copenhagen conference in 2009 that signaled that no stringent emission targets would be taken up by governments in the foreseeable future. Since then, however, some governments have become interested to engage the private sector and NGOs in climate change mitigation, given that no legally binding framework for government-led mitigation existed after 2012. In the run-up to the Paris Conference in 2015, the UN Secretary General himself engaged in this process to garner support for international climate policy by calling a summit inviting “world leaders, from government, finance, business, and civil society [...] to galvanize and catalyze climate action. He has asked these leaders to bring bold announcements and actions to the Summit that will reduce emissions” (United Nations 2014). His intervention was a key feature of this phase and triggered the strong increase in TGLs in 2014.

These observations correspond to the analysis by Green (2013:2) who presents the UNFCCC as the “coral reef” of the climate change regime complex. The coral reef provides the backbone of the whole ecosystem

and whatever develops in this system depends on the reef. Similarly, Keohane and Victor (2011) speak about concentric rings. In the light of the above discussion, we would slightly adjust and update their presentation by placing the UNFCCC and as well as IIGOs in form of negotiation groups at the core, a number of highly influential FIGOs like the World Bank and negotiation fora like G8, G20 and the MEF as well as the few new FIGOs created within the negotiation process (GEF and GCF) in the second ring, and other FIGOs trying to influence the negotiations and/or to understand which part of the agreement could be relevant for their own mandate along with TGLs in a third ring. This third and most peripheral ring had the greatest part in the strong rise of the number of organizations within the regime complex. Environmental NGOs, business lobbies and research institutions participating as accredited observers in the negotiation process can be considered as participants at the same level.

### *2.3. Effects of the rise of informal organizations and initiatives*

Negotiation groups are directly involved in rulemaking and thus highly influential within the UNFCCC process. Some groups have been particularly successful in this respect. AOSIS for instance, managed to bundle the preferences of the vulnerable small island states at an early point in time and to jointly demonstrate the dramatic consequences of climate change. Given the salience the issue had for them, they were granted a seat in certain UNFCCC committees, in which given their size and hard power, they would usually not have been permitted to send a delegate (Benwell 2016: 70, Betzold et al. 2012: 594). At the other end of the developing country spectrum, BASIC was also quite successful. The common interests of BASIC member countries were to avoid the introduction of commitments for emerging economies and to gain visibility and reputation in the international arena. Indeed the Paris Agreement now is based on a bottom-up system in which each country can itself define what it will contribute to global mitigation efforts and can also condition any activity on funding by industrialized countries. In terms of international reputation, the BASIC countries, notably India and China were often presented as spoilers of the negotiation process (see e.g. Michaelowa and Michaelowa 2012 for India, Conrad 2012 for China), but at the same time, started to be involved in all high-level discussions (see also Section 3 below) and to be named along with major powers, notably the United States. It is no doubt not coincidental that the US and China also jointly signed the Paris Agreement at the G20 meeting on 2<sup>nd</sup> September 2016.

Whether the rise of negotiation groups and their substantial influence on the negotiations is advancing or hindering a global effort towards climate change mitigation obviously depends on the balance between opposing groups within the process. It could be argued, however, that the break-up of G77+China into various sub-groups may have helped to unblock the stalemate regarding the interpretation of the UNFCCC's 'common, but differentiated responsibilities' principle and supported the move from a rigid list of countries with and without commitments to the more dynamic approach embodied in the Paris Agreement in which each country participates in away consistent with its (self-perceived) capacities (see Michaelowa and Michaelowa 2015). The eventual climate change mitigation achieved by this approach will depend on how countries' ambitions evolve over time. The current engagements presented in the form of each party's 'Nationally determined contribution') leave a substantial gap with respect to the simultaneously agreed objective to keep global temperature rise "well below 2°C" (UNFCCC 2015).

As opposed to IIGOs, to date, only few TGLs have been able to directly influence rulemaking at the UNFCCC. This has only been the case when TGLs combined highly reputed think tanks with governments and key private companies. For example, in such a strong coalition the US-based think tank "World Resources

Institute” was able to influence accounting rules through the Greenhouse Gas Protocol initiative. Apart from such exceptional cases, TGIs have had some indirect effects through standard setting, lobbying, and influencing public opinion in the members’ countries of origin. Just as for the IIGOs discussed above, the effect on climate change mitigation is not unambiguously positive, but depends on the balance of preferences among TGI members. Given the limited orientation towards mitigation in their own design, high expectations about their contribution to closing the Paris Agreement’s ambitions gap are certainly not very realistic (Michaelowa and Michaelowa 2016b). Yet, as discussed above, some TGIs such as carbon funds have been very successful at supporting the implementation of the Kyoto Protocol and could become similarly relevant for the implementation of the Paris Agreement.

Overall, our main conclusion is that the informal organizations and initiatives involved in international climate politics generally did not play an independent role with respect to the core objective of the climate change regime to mitigate climate change, but rather worked either in response to outcomes from the UNFCCC or tried to influence these outcomes in the first place. Despite the substantial increase in the number of organizations and initiatives populating the climate change regime complex, the UNFCCC clearly remains at its core, and further developments of international climate policy will continue to depend crucially on the success of this international regime.

### **3. Informality of rules and procedures within the UNFCCC**

Given the central role of the UNFCCC, we will now examine how informality has affected the negotiation outcomes within this international regime. In this context, we will consider the informality of rules and procedures and how they evolved over time. The general importance of rules and procedures, both formal and informal, has been discussed in detail in the extant literature, notably by Yamin and Depledge (2004), Depledge (2005) and Monheim (2015). The following discussion will build on this literature adding some insights from the successful negotiation of the Paris Agreement in December 2015. The discussion will again be structured by first describing the change observed over time, then explaining these developments, and finally, discussing their effect.

#### *3.1. The development of informal rules and procedures over time*

Ever since the beginning of the international climate negotiations informality has played an important role. In her comprehensive monograph on the management of international climate negotiations Depledge (2005: 85ff.) provides numerous examples on pragmatic interpretations, bypassing and even some cases of explicit relaxation of formal rules and regulations (see also Yamin and Depledge 2004). She also distinguishes between a number of arenas of different degree of informality that provide opportunities for delegates to discuss more freely (Depledge 2005: 108ff.). Their range covers everything between informal plenary meetings that only differ from formal plenaries by a corresponding declaration by the President of the conference, to informal consultations between the President and selected countries or broader but still highly informal working groups on specific technical issues. Due to their strong degree of informality, some of the smaller technical working groups have later even been coined as “informal informals” (Monheim 2015: 31). In the climate regime as elsewhere, and ever since its start, informal negotiations—at times very

informally “in the corridors and hotel bars of conference venues” (Bauer 2006, p. 34)—have been considered as crucial to eventually achieve any progress.

Yet already for the early 2000s, Depledge (2005: 86) notes that informality appears to be on the rise to an extent that some participants consider the formal plenaries and subsidiary bodies to have become of a “more ritualistic” nature. She further notes that the rising number of specialized topics to be negotiated also increases the number of informal meetings. The latter trend has probably continued over the last decade. In addition, the greater differentiation of negotiation groups discussed above suggests that a greater number of informal bilateral negotiations between members of these groups will now have to take place before any agreement. Indeed in the run up to the Paris Agreement in 2015, there were so many bilateral consultations that nobody was able to keep track (Bodansky 2016), indeed the French Presidency virtually had bilateral last-minute talks with all individual groups (Brun 2016: 120). This is what Depledge (2005: 131) refers to as “shuttle diplomacy”.

At the same time—in contrast to the development of informal organizations and initiatives discussed in Section 2—the development of informality within the UNFCCC negotiations has certainly not simply been an uninterrupted increase, but an up and down depending on the issue areas to be discussed, and also on the willingness of the parties to accept complementary negotiations behind the scene. Informal meetings have at times been heavily contested due to the lack of inclusiveness and transparency resulting thereof. At Copenhagen both the hand-picked “Friends of the Chair” and the small informal meeting between Obama and the heads of state of the BASIC countries that came up with the draft of the document later “taken note of” as the “Copenhagen Accord” were heavily criticized in this respect. This led to considerable mistrust and contributed to the failure of the conference (Monheim 2015: 37ff., see also Vihma et al. 2011: 325).

Hence rather than to always become more informal, informal procedures have at times been replaced again by more formal approaches, or by other, more innovative informal approaches.

In addition to informal meetings during the UNFCCC conference itself, the presidencies usually organize an informal negotiation process throughout the preceding year meeting individual groups and member countries. Their intensity and structure also varied over time.

When it comes to the interpretation of rules, informality can become similarly controversial. A matter in case is the interpretation of the consensus principle for the final agreement. The consensus principle itself is not formally anchored in the Convention, but results from the lack of agreement on specific voting provisions (Monheim 2015: 31). Ever since the agreement to the Kyoto Protocol in 1997, there have been instances where a consensus was declared despite disagreement by some of the parties. At Kyoto, the President read out the controversial paragraph and asked whether there were any objections. But when India, China and the EU raised their flags, he quickly went on with the next paragraph. There were no other objections. Had anyone complained at this point, he would have been held responsible for the failure of the negotiations. So the agreement passed (Grubb et al. 1999: 96). In other instances, parties did formally complain. In Geneva 1996 and in Copenhagen 2009 this led to the parties’ decision to merely “take note of” rather than to agree upon the final document. One year after Copenhagen at the Cancun conference, however, the agreement was gaveled through against the explicit objection by Bolivia<sup>4</sup> and the same

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<sup>4</sup> It is noteworthy that President Espinosa provided a peculiar definition of “consensus” as follows: “Consensus requires that everyone is given the right to be heard and have their views given due consideration and Bolivia has been given this opportunity. Consensus does not mean that one country has the right of veto, and can prevent 193 others from

happened again one year later in Doha against the explicit objection by Russia, Ukraine and Belarus (Rajamani 2016: 212). After Cancun, the press reported that Bolivia might consider challenging the Cancun decision at the International Court of Justice, but this would have had little chance of success (Werksman 2010). And in the following year, despite the blunt ignorance of the objection of a major power like Russia, the negotiation process continued based on the 'agreement' at Doha. However, to retaliate, Russia blocked the meetings of the UNFCCC subsidiary bodies at the following Bonn meeting in spring 2012 for a whole week. The question arises how far the consensus interpretation can be stretched in the future when major parties flag their objections. In Paris, this was not necessary as only Nicaragua voiced some objection, but did not insist on the matter.

However, in Paris, the agreement was at risk just before its conclusion, due to an error in the draft that stated "shall" instead of "should" with respect to the increasing ambition of emission reductions by the United States. Legally, this would have turned a recommendation into an obligation. The issue was highly critical as the new formulation would have implied that President Obama could not himself approve the agreement, but would have required congressional agreement, and in fact a two-thirds majority in the Senate (Bodansky 2016, Bodansky and Spiro 2016). Conference President Laurent Fabius eventually decided to return to the term "should" and to include this change in a list of "small technical issues and translation errors" that remained to be addressed. The list was very quickly read out in the plenary, and hardly anyone could verify the different points so fast. Nobody objected.

It should be noted that the whole set-up of the Agreement had already been oriented at the idea to make it look like an ordinary conference decision, rather than a binding international agreement. Hence the relevant text of the Agreement is hidden in the annex of the—otherwise brief—decision document.

### *3.2. Explaining changes in informality of rules and procedures*

It appears that the informal interpretation and at times circumvention of formal rules and processes can be helpful to forge a final decision and compromise, but at the same time, it can be over-stretched, hurt certain parties, destroy trust and lead to an unnecessary stalemate. This seems to have happened in Copenhagen and the Presidencies of subsequent conferences had to make a substantial effort to restore some trust among parties. During all these conferences from Cancun in 2010 to Paris in 2015, the constant mantra iterated by the Presidency was transparency and inclusiveness. Monheim (2015) compares Copenhagen to Cancun based on numerous interviews and finds that delegates broadly agree that Copenhagen completely failed in this respect, while Cancun worked out very well. For instance, instead of organizing the traditional "Friends of the Chair" meetings with participants selected by the President, regions themselves nominated their participants. While this was more inclusive and transparent, it turned out to be a suboptimal frame for efficient exchange because the number of participants was often too high, going up to 70 persons (Monheim 2015: 54). As a consequence, South Africa pioneered the "Indaba" ("business" in Zulu) approach in Durban 2011. In principle every country could still send a minister, but the overall number of participants was constraint to about 40 people who could be seated around a square table. Ever since, this approach has been applied as governments have been able to informally agree which ministers should take the scarce seats at the table. Especially if accompanied by a wise information policy by the president where results of

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moving forward after years of negotiations on something that our societies and future generations expect." (IISD 2010: 28).

the Indaba are communicated to the formal plenary every day, the approach was seen as sufficiently inclusive to allow an efficient negotiation. Laurent Fabius very skillfully applied this approach during the Paris Conference to achieve a constructive mix of informality and transparency (South Africa 2015).

When observing the increase and then fall in informality, one could think of a formality-informality cycle. The cycle is based on an experimental testing of the extent to which rules and procedures can be rendered more flexible and hence efficient, but with the risk of sudden fallback and heavy criticism. Finding acceptable and efficient procedural innovation is to a large extent a matter of the creativity and sensitivity of the presidency.

Formality-informality cycles also occur without any crisis or criticism, in the context of the introduction of new issues to be explored. An instructive example is the introduction of the market mechanisms of the Kyoto Protocol, the Clean Development Mechanism (CDM) and Joint Implementation (JI). They emerged as a real surprise during the Kyoto Conference of 1997 (Grubb et al. 1999: 97ff.), but a long discussion had preceded this decision. After the Berlin Conference of 1995 had agreed to test market-based approaches through a pilot phase of “Activities Implemented Jointly” (AIJ), a number of countries and private actors had started to experiment with mitigation projects. While formally such projects could not generate emission credits, the undeclared aim of the pioneers was to eventually achieve this, and they did so in Kyoto. As these instruments were highly innovative, the subsequent setting of rules was challenging and involved varying degrees of informality.

The World Bank especially felt that it was well placed to play a key role in defining the rules of the Kyoto Mechanisms. Therefore, in 1999 it set up the “Prototype Carbon Fund” (PCF) open for government and private subscriptions (Michaelowa and Michaelowa 2011: 263). At the same time, private sector players set up the International Emissions Trading Association (IETA) as a lobby group to influence design of the mechanisms. The formal negotiations on the rules for CDM and JI were only dragging on slowly.

The Marrakech Conference in 2001 then formally agreed on a set of rules for CDM and JI as well as the institutions overseeing these mechanisms (CDM Executive Board and JI Supervisory Committee). However, their detailed interpretation, for example regarding the methodologies for defining project baselines, remained unclear. Building on the first lessons from the PCF, the World Bank engaged with a number of governments to set up specific funds for CDM and JI investments, e.g. with the Netherlands, Spain and Italy (Michaelowa and Michaelowa 2011: 263). The World Bank was quite clear that it expected the specific baseline and monitoring methodologies to be those that it had developed for its funds. The CDM Executive Board did, however, not accept this reasoning and rejected several of the World Bank’s methodology proposals (Michaelowa and Michaelowa 2016a).

Only after 2005 when the Kyoto Protocol had become operational, all major elements of the market mechanisms had been formally defined. After they have worked well for a while, the Paris Agreement now suggests that there will be new mechanisms. Again the floor is open for new ideas. Hence the cycle starts anew.

A key informal way for the emergence of new topics is their discussion through side events at the UNFCCC negotiation sessions. Such side events have traditionally been organized by accredited observer NGOs (see Hjerpe and Buhr 2014, Schröder and Lovell 2012). The UNFCCC Secretariat administers the allocation of time slots to organizations proposing a side event. Given that the signaling function of side events has increasingly been recognized, since the mid-2000s the demand for slots has exceeded supply. Therefore, the Secretariat

has developed an increasingly elaborate set of principles for prioritizing side event applications. These incentivized collaboration between governments and NGOs. For the last years, a significant number of side events have been held regarding the design of new market mechanisms, and negotiation positions of governments have been influenced by these events.

As the negotiations in the subsidiary bodies of the UNFCCC in May 2016 revealed significant differences between government positions on the market mechanisms, governments were asked to provide submissions on their views until end of September 2016. At the same time, initiatives are emerging to test approaches to the mechanisms. For example, the World Bank is setting up a “Transformative Carbon Asset Facility” for this purpose. This mirrors the approach undertaken by the World Bank in the first years of the Kyoto Mechanisms (see Michaelowa and Michaelowa 2011).

### *3.3. The effect of informal rules and procedures*

The above discussion shows that the use of informal rules and procedures can have both positive and negative effects, depending on the right balance in response to participants’ willingness to either proceed fast or first remove remaining stumbling blocks, to the general atmosphere of trust or mistrust, to the specific topic at stake and to the question how ripe it is for final decision. The judgement of which informal rules and procedures are ‘good’ or ‘bad’ cannot be made in general terms as it depends on the concrete situation. Bodansky (2016) for instance argues that if countries had been as familiar with the bottom-up system of nationally determined contributions as they are now, the conference in Copenhagen might already have led to an agreement. The judgement of whether a specific approach or interpretation is appropriate and will be accepted by the parties lies in the responsibility of the Presidency. This implies that the diplomatic skills and the management capacity of the President and his or her team have a major impact on the overall outcomes of the negotiation process and hence for the effective mitigation of global climate change.

## **4. Conclusion**

The number of informal organizations involved in international climate politics has significantly increased over time. They generally fulfil a contributing role to the UNFCCC process, like the country negotiation groups and groups set up to engage in operationalization of the Kyoto Mechanisms. Only in times when the UNFCCC process had stalled, some of them tried to serve as alternative. This was particularly the case for organizations set up in the context of the Ban Ki Moon Summit of 2014. But once the UNFCCC process came back on track through the Paris Agreement, these institutions have acknowledged the primacy of the UNFCCC.

Due to the need for consensus, the UNFCCC process has developed a number of informal processes to remain operational. Some of these processes have been more successful than others—e.g. the “Indaba” approach pioneered by South Africa at the Durban conference, which served as a model for the French approach in Paris 2015. The Copenhagen conference of 2009 had been a high profile case of failure due to informal procedures seen as exclusionary by relevant parties. Given the key role of the host country of a COP, its choice of the appropriate informal procedure is critical for the COP’s success. Not only the procedure itself but also the way of communicating its outcomes is important, as again shown by the Paris

conference. The most striking informal approach in the UNFCCC context is the interpretation of consensus, which was stretched considerably in 2010 and 2012. Especially in the latter case, where Russia was overridden, the limitations of this approach became apparent.

In a number of cases, for example in the context of market mechanisms, a formality-informality cycle has emerged where a formal decision by the UNFCCC process triggers informal activities that in turn lead to formalization in the form of rules. Such cycles can repeat themselves over time.

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**Annex 1: List of interviews at the UNFCCC negotiations in Paris, 10<sup>th</sup> December, 2015**

<b>Organization</b>	<b>Name and function of person interviewed</b>
International Union for Conservation of Nature (IUCN)	Patrick Andrew Wylie (Senior REDD+ Advisor / Climate Change Mitigation Policy Officer)
European Patent Office (EPO)	Dr. Ilja Rudyck (Senior Economist)
International Fund for Agricultural Development (IFAD)	Alessia Valentini (Program Assistant)
Food and Agricultural Organisation (FAO)	Dr. Martin Frick (Director of Climate, Energy and Tenure Division)
International Civil Aviation Organization (ICAO)	Blandine Ferrier (Associate Environment Officer)
International Maritime Organisation (IMO)	Stefan Micallef (Director, Marine Environment Division)
International Labour Organisation (ILO)	Jessika Berns (Junior Technical Officer)
United Nations Educational, Scientific and Cultural Organization (UNESCO)	Julia Heiss (Programme Specialist)
United Nations Development Program (UNDP)	Verania Chao Rebolledo (Officer of Energy and Environmental Programmes)

## Annex 2: Descriptive statistics

**Table A1: Developing country participation and mitigation orientation of TGI design**

Share of non-Annex I members	Sum of design criteria met				
	0	1	2	3	4
Zero	14 (37%)	7 (18%)	6 (16%)	10 (26%)	1 (3%)
Low	13 (48%)	9 (33%)	4 (15%)	1 (4%)	0 (0%)
medium	13 (62%)	6 (29%)	2 (10%)	0 (0%)	0 (0%)
High	10 (45%)	5 (23%)	4 (18%)	3 (14%)	0 (0%)
Only	1 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Total	51 (47%)	27 (25%)	16 (15%)	14 (13%)	1 (1%)

Notes: Numbers in brackets refer to row percentages. The categories for the share (s) of non-Annex I membership are:

'only': s=100%, 'high': 100%>s>50%, 'medium': 50%≥s>25%, 'low': 25%≥s>0%, 'zero': s=0%. The association between the two variables is insignificant (Cramer's V = 0.20, p-value = 0.40).

Design criteria as defined in Michaelowa and Michaelowa (2016) include the existence of 1) a mitigation target, 2) financial incentives, 3) a clearly defined baseline, and 4) some mechanism for MRV.